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09/651,127	08/30/2000	Petter Bragd	010315-089	1058

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/651,127

Applicant(s)

BRAGD ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 11, 12 and 14-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11, 12 and 14-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, at least two integrated layers, wherein the layers partially penetrate into each other so that there is no clear partitioning line between the layers must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to because they fail to supply reference numerals for features shown. The circles and x-marks shown in the figures are not referenced. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-6, 11, 12, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rezai et al. (5,713,881) in view of Cohen et al. (5,728,083). With respect to Claims 1, 2, 6, 11, 12, and 14-17: Rezai discloses an absorbent structure used in a such things as a diaper or incontinence guard (column 1) that has multiple integrated layers (see figures 1-6), in which has one layer (72) made of an cellulosic foams made of regenerated rayon, which is viscose (column 20, line 36 and column 21, lines 21-23), and another layer (71) which is a mixture of an absorbent foam and a superabsorbent material. (column 11, lines 56-62). Rezai discloses that the layers of the article are crosslinked together (column 22, lines 62-67) such that the layers of the article are entangled (column 23, lines 4-6). It is the examiner's position that crosslinking and entanglement causes the layers of the article to be integrated together so that there is no clear partitioning line between the layers. Rezai also discloses the absorbent structure being compressed and expands when wet (column 37, lines 54-57).

Rezai discloses controlling the pore size of the cellulosic layer, however does not disclose the use of each layer being of differing pore sizes. Cohen, discloses the use of

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a multi-layered absorbent article where each layer has an average pore size no greater than the layer immediately proceeding it toward the liquid accepting surface (column 4, lines 20-23). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the layers of Rezai, impart a lower average pore size than the layer directly above, as taught by Cohen, in order to improve the sequestering of liquids within the absorbent structure. (see Cohen, column 4).

With respect to Claim 3: Rezai discloses the substrate layer has zero superabsorbent, and the second layer being a mixture of foam and superabsorbent, therefore different amounts.

With respect to Claim 4: Rezai discloses the substrate layer being a layer on top of the absorbent foam and superabsorbent layer, and Cohen discloses the pore size decreasing from top to bottom. Therefore, when the substrate layer is on the bottom of the absorbent foam and superabsorbent layer, then the absorbent foam and superabsorbent layer (which contains more superabsorbent material than the substrate layer, which has none) has a larger pore size. When the substrate is on the top of the absorbent foam and superabsorbent layer, then the absorbent foam and superabsorbent layer, which contains the greatest amount of superabsorbent, has the smallest pore size.

With respect to Claim 5: See Rezai, column 21, lines 24-25.

### ***Response to Arguments***

Applicant's arguments filed 16 September 2003 have been fully considered but they are not persuasive.

With respect to Applicant's arguments that the layer 71 disclosed by Rezai is not a foam layer, it is noted that the instant claim discloses a layer comprising a foam material. The claims do not use the word "consist", they use the word comprise, which is an open ended claim and leaves room for other components besides only foam. Rezai discloses in column 11, lines 56-59, the layer 71 comprises cellulose foam particles. Rezai therefore discloses a layer that comprises a foam material. The rejections stand as stated above.

With respect to Applicant's arguments that Rezai fails to disclose the layers partially penetrating each other, it is noted that Rezai discloses in column 23, lines 4-6, the layers being crosslinked such that entanglement is present between the two layers. Rezai therefore discloses the layers partially penetrating each other. The rejection stand as stated above.

With respect to Applicant's argument that Cohen fails to disclose foam layers, it is noted that Cohen is relied upon for the teaching of varied pore sizes. Cohen discloses decreasing the pore size between subsequent layers to improve the flow of liquid between the layers. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642

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F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

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*CMA*

cla

November 19, 2003



**WEILUN LO**  
**SUPERVISORY PATENT EXAMINER**  
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